UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/52/471
16 October 1997
ENGLISH
ORIGINAL: FRENCH

Fifty-first session
Agenda item 110

ELIMINATION OF RACISM AND RACIAL DISCRIMINATION

Measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report on contemporary forms of racism, racial discrimination, xenophobia and related intolerance prepared by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 51/79.

97-27578 (E) 301097 301097

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 4	3
II.	ACTIVITIES OF THE SPECIAL RAPPORTEUR	5 - 12	3
	A. Participation in the work of the Commission on Human Rights	5 - 9	3
	B. Missions under consideration by the Special Rapporteur	10 - 12	5
III.	CONTEMPORARY MANIFESTATIONS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE	13 - 27	5
	A. Discrimination against immigrants and migrant workers	14 - 17	6
	B. Human rights violations in holding areas in France	18	8
	C. The role of the media in inciting racial violence: contributions to the debate on the theme 'Internet, racism and racial discrimination'	19 - 21	10
	D. Roma, gypsies or travellers	22 - 25	10
	E. Discriminatory application of the death penalty in the United States of America	26 - 27	11
IV.	MEASURES TAKEN OR ENVISAGED BY GOVERNMENTS AND LEGISLATIVE AND JUDICIAL BODIES	28 - 45	12
	A. Communication from the German Government	29 - 31	12
	B. United States of America	32 - 37	14
	C. France	38 - 40	15
	D. Communication from the Brazilian Government	41 - 42	16
	E. Australia	43 - 45	18
V.	CONCLUSIONS AND RECOMMENDATIONS	46 - 48	19

I. INTRODUCTION

1. Pursuant to the mandate given to him by the Commission on Human Rights in its resolution 1993/20 and extended for a period of three years by its resolution 1996/21, the Special Rapporteur presented to the Commission, at its fifty-third session, a report on his activities during 1996 (E/CN.4/1997/71 and Add.1 and 2).

2. By its resolution 1997/73 of 18 April 1997, concerning measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Commission took note of the aforementioned report and requested the Special Rapporteur to continue his exchange of views with Member States and the relevant mechanisms and treaty bodies in order to enhance further their effectiveness and mutual cooperation. The Commission also renewed its request to the Secretary-General to provide the Special Rapporteur with all the appropriate assistance to carry out his mandate and enable him to submit an interim report to the General Assembly at its fifty-second session and a comprehensive report to the Commission at its fifty-fourth session.

3. This report is submitted pursuant to that Commission resolution and to General Assembly resolution 51/81, of 12 December 1996. In preparing the report, the Special Rapporteur received, in response to his requests, communications from a number of States and reports from non-governmental human rights organizations. As in the past, he also made use of unofficial sources, including reliable international press sources, to make up for the lack of information resulting from most States' failure to cooperate.

4. This report consists of three sections concerning, respectively, the activities of the Special Rapporteur since the previous session of the General Assembly; contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance; and measures taken or envisaged by Governments. It ends with conclusions and recommendations.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Participation in the work of the Commission on Human Rights

5. The Special Rapporteur took part in the work of the fifty-third session of the Commission on Human Rights, in April 1997. In addressing the Commission, the Special Rapporteur alerted it to the disturbing situation brought about by the resurgence of manifestations of racism and racial discrimination in the world. The discussions which followed his presentation gave rise to a decision and to two resolutions of the Commission (1997/73, mentioned above, and 1997/74).

1. Decision 1997/125

6. Several delegations of member States of the Organization of the Islamic Conference (OIC) reacted strongly to a passage in the Special Rapporteur's report (E/CN.4/1997/71, paragraph 27) which they considered as blaspheming the Qur'an. Following this regrettable incident, the Special Rapporteur explained that the passage in question was a quote from a document produced by the Israeli Government and that he did not intend to become involved in religious polemics and controversies. The incident prompted the Commission to adopt decision 1997/125 of 18 April 1997 deleting the final sentence of section 3 of the text quoted in paragraph 27 of the report.

7. The Special Rapporteur later met with Ambassador Agus Tarmidzi, Permanent Representative of Indonesia to the United Nations and the specialized agencies in Geneva and current Chairman of OIC, on 23 May 1997. At that meeting, the Special Rapporteur confirmed that he was not the author of the passage with which the members of OIC had taken issue and that he could not take responsibility for it. He informed Ambassador Tarmidzi of the contacts which he had had with the Israeli Government concerning its communication containing the passage in question, but reminded him that it was not for the Special Rapporteur to censor a government communication. Concerning the reference to anti-Semitism in the report, the Special Rapporteur told the Ambassador that it was the resolutions of the Commission on Human Rights that made a distinction between anti-Semitism and other forms of racial discrimination of which Arabs and Muslims might be the victims. Ambassador Tarmidzi acknowledged the explanations given by the Special Rapporteur and said that he would make them known to the members of OIC at its next meeting.

2. Resolution 1997/74

8. On 18 April 1997, following its consideration of the issue of racism, racial discrimination, xenophobia and related intolerance, the Commission on Human Rights adopted resolution 1997/74, which deals with the following subjects: implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination and coordination of related activities; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and follow-up to his visits; the International Convention on the Elimination of All Forms of Racial Discrimination; and a world conference against racism and racial discrimination, xenophobia and related intolerance.

9. The Commission requested the Special Rapporteur to continue his exchange of views with Member States and the relevant mechanisms and treaty bodies within the United Nations system in order to enhance further their effectiveness and mutual cooperation; called upon all Governments, intergovernmental organizations and other relevant organizations of the United Nations system, as well as non-governmental organizations, to supply information to the Special Rapporteur; urged all Governments to cooperate fully with the Special Rapporteur with a view to enabling him to fulfil his mandate; and requested the Secretary-General to provide the Special Rapporteur, without further delay, with all the necessary assistance and resources to carry out his mandate and enable him to submit an

interim report to the General Assembly at its fifty-second session and a comprehensive report to the Commission at its fifty-fourth session.

B. Missions under consideration by the Special Rapporteur

10. After the fifty-third session of the Commission on Human Rights, the Special Rapporteur had considered undertaking missions to Australia and South Africa.

1. Australia

11. In his latest report to the Commission on Human Rights (E/CN.4/1997/71), the Special Rapporteur stated that he had written to the Australian Government regarding two communications which he had received in 1996 and which contained allegations of a rise in racism and xenophobia, particularly towards Aborigines and Australians of Asian origin. No response regarding the two communications had been forthcoming from the Australian Government. However, the latter subsequently responded positively, on 25 August 1997, to the Special Rapporteur's request to undertake a mission to Australia. He welcomed this response from the Australian Government and plans to carry out his mission immediately after participating in the work of the Third Committee of the General Assembly.

2. South Africa

12. During the fifty-third session of the Commission on Human Rights, several representatives of non-governmental organizations reported on the worrying situation in South Africa, attributable, inter alia, to the legacy of apartheid, inter-ethnic conflicts and problems related to massive immigration. The Government has imposed restrictions on immigration which several organizations consider to be discriminatory towards foreigners. In order to assess the situation in person, the Special Rapporteur had considered undertaking a mission to that country in August 1997. The Office of the United Nations High Commissioner for Human Rights Centre for Human Rights contacted the Permanent Mission of South Africa in Geneva to this end but is still awaiting a response from the South African Government. Since the dates planned for the mission have passed, it has been postponed until a response is received.

III. CONTEMPORARY MANIFESTATIONS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

13. As in his previous reports, the Special Rapporteur would like to highlight the most significant events which have taken place as regards contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance. These concern discrimination against immigrants and migrant workers; human rights violations in holding areas in France; the role of the media, particularly the Internet, in inciting racial hatred and violence;

discrimination against Roma, gypsies or travellers in certain countries; and the discriminatory application of the death penalty in the United States of America.

A. Discrimination against immigrants and migrant workers

1. Contribution of public bodies responsible for combating racism and other forms of racial discrimination

14. The non-governmental human rights organization Nord-Sud XXI stated the following:

"One of the major issues regarding racism is the problem of population flows moving from underdeveloped areas, war zones or situations of repression to peaceful, developed areas. That States of the North cannot at one and the same time (even though this is indeed their attitude):

- Preserve unchanged the profound inequality of the structures of international society and give lessons in humanitarianism to the whole world;

- Turn away vast numbers of individuals who are entitled to asylum under agreements such as the 1951 Convention relating to the Status of Refugees, after having themselves organized immigration during their years of economic growth;

- Treat in a discriminatory manner de jure or de facto refugees residing in their territory.

"France, which constantly invokes the two-centuries-old Declaration of the Rights of Man and of the Citizen (not 'the Rights of the Frenchman'), has been elaborating a series of discriminatory legal and regulatory provisions (such as the 1996 law on identity checks). Its public administration (service des étrangers at the prefecture level, Office français pour les réfugié et apatrides, etc.) often functions in a discriminatory manner, working on the basis of mere circulars which contradict legislative provisions or decisions of the Supreme Court. Rights and freedoms have thus been eroded and legality undermined by a policy of social and racial discrimination ...

"Immigration policy in Europe and the United States of America is a measure of the ability of the great Powers to conceive of a new kind of North-South relationship, based on cooperation rather than hegemonism.

"In any case, Nord-Sud XXI, whose philosophy, internal methods and social practice involve systematically bringing together public figures and political activists from all over the world, believes that a world summit on racism, paying particular attention to the issue of immigration and its linkage with North-South relations, should be organized as a matter of great urgency.

"The Vienna and Copenhagen summits produced declarations of great significance, but much remains to be done to act on their findings."

15. The Ligue des droits de l'homme (Belgium, Francophone section) sent the Special Rapporteur information claiming that the Belgian Government has unburdened itself of the task of expelling foreigners by using a private firm. In support of its communication, the Ligue transmitted to the Special Rapporteur excerpts from a recent publication dealing with such "subcontracting" of the expulsion of undocumented aliens:[1]

"Since 1994, Belgium has been sending hundreds of deported Africans, no longer to their countries of origin, but to Abidjan (Côte d'Ivoire), where they are received and dispersed by the firm Budd. The local office of the firm, which has branches throughout the world, is managed by a man called Faustin who is universally believed to have the most surprising contacts in Abidjan's immigration department but also in various African embassies and government offices [...].

"The transport of deportees has become a lucrative market since Europe began expulsions on a very large scale; suddenly, entrepreneurs are also trying to gain a foothold in this market. The French firm Budd has existed since 1850. It was originally the 'agent' of Club P & I, a specialized insurance company for shipowners which insured them against anything that could possibly go wrong on board ship. Having stowaways on board is one particular kind of 'damage' and these agents have long been in charge of their repatriation. For James T. Budd, the director, it was not such a big change when he went into the deportee business. He has an office on the Champs-Elysées, where his colleagues in the Wiggins firm of security consultants are also located [...].

"The Netherlands police had also received offers from Budd via the Côte d'Ivoire immigration department suggesting a certain overlapping between these different bodies. Commander Jaco Oussoren is extremely critical of the Belgian system. The Belgian Government would order a person to be escorted to a certain country, but did the Belgian police have the right to summarily subcontract a deportation order issued by the Ministry? No one would check what Budd did with the deportees, let alone their final destination. In the Netherlands, on the other hand, the police commander would immediately have been inundated with parliamentary questions."

2. United Nations seminar on immigration, racism and racial discrimination (Geneva, 5 to 9 May 1997)

16. In the context of the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (General Assembly resolution 49/146, annex, para. 7 (e)), the Office of the High Commissioner/ Centre for Human Rights organized a seminar on immigration, racism and racial discrimination in Geneva from 5 to 9 May 1997. The purpose of the seminar was to examine the contemporary forms and manifestations of racism and racial discrimination which immigrants must face. The Special Rapporteur was invited

but unable to attend. However, he received the texts of some of the presentations made.

17. In his presentation on globalization and immigration, Mr. Jean-Pierre Page, officer in charge of international trade union relations and activities at the Confédération Générale du Travail (France), commenting on the restrictive, discriminatory policies of the industrialized countries of the North towards foreign workers from the South, said:

> "The European Union advocated the free movement of labour, while each country of the European Community attempted to restrict immigration from outside the Community. The United Kingdom continued to give preference to immigrants from the Commonwealth. As for France, migrants from the former colonies were always admitted more easily, then preference began to be given to migrants from countries whose political regimes seemed more favourable. There were also, in France's case, migrants from the overseas departments and territories, whose numbers were not included in the statistics on aliens. Germany gave preference to Turkish workers, then to Yugoslav workers, mainly Croats, and to asylum-seekers from the Eastern European countries, before finally adopting more restrictive legislation.
>
> "The United States of America also pursued an immigration policy guided primarily by specific manpower requirements but also by its economic and strategic interests. Its policies towards Israel, the Philippines and China were guided by strategic concerns. As for Mexican immigrants, the opening up of the North American market (North American Free Trade Agreement (NAFTA)) and the opportunity to put pressure on wages made them particularly attractive to United States employers. Nowadays, the focus is on the "brain drain", on those highly qualified in the arts, culture and science. The confluence of all these interests has led the United States to gradually increase the overall quota, and that does not include the high proportion of illegal immigration into the country. This policy has also been accompanied by particularly repressive measures against Mexican nationals and those working in the maquiladora industry and in free zones."

B. Human rights violations in holding areas in France

18. The Association nationale d'assistance aux frontières pour les étrangers (ANAFE) (France) states in its 1997 report on visits carried out to holding areas by the authorized organizations (Service oecuménique d'entraide (CIMADE), Amnesty International, the French Red Cross and ANAFE itself)[2] that:

> "In the minds of the legislature in 1992, access by humanitarian organizations to persons in holding areas for the provision of humanitarian and legal assistance was a vital safeguard, and they made giving up an amendment to that effect subject to the Government's committing itself to establishing the procedures by decree. This first year of operation of the decree has unfortunately confirmed the fears which ANAFE expressed when it was published in May 1995: the restrictions imposed, particularly in terms of the frequency of visits allowed, prevent the organizations from doing their job.

"The visits have allowed the organizations, however, to record violations of the rights, dignity and even safety of persons of such gravity that the situation for foreigners at France's air, sea and railway entry points can be described as scandalous:

"Upstream of the holding areas:

- Systematic violations of the right to one clear day before the decision to refuse entry is carried out;
- Immediate refoulement as soon as physically possible;
- Illegal types of deprivation of liberty (keeping persons on board ship at sea, administrative detention and arbitrary detention at some frontier posts);
- No possibility of communicating or appealing;
- No possibility under these conditions of seeking asylum;

In the holding areas:

- Accommodation in conditions that are physically very inadequate and injurious to individual dignity and even safety, particularly for minors;
- Conditions of accommodation that for the most part allow no freedom of movement and impose excessive isolation on the individuals held;
- Lack of information for the interested parties on their rights and on the procedure which they are undergoing;
- Serious procedural irregularities;
- Violations of:
  - The right to the assistance of an interpreter or a doctor;
  - The right to communicate freely;
  - The rights of defence;
  - The right of asylum.

"This situation, of course, has its roots in the attitude of the administration, which systematically sacrifices respect for the law on the altar of 'efficiency', but the legislation itself, which sets up injustices and secrecy, opened the way for it."

C. The role of the media in inciting racial violence: contributions to the debate on the theme "Internet, racism and racial discrimination"

19. In his latest report to the Commission on Human Rights (E/CN.4/1997/71), the Special Rapporteur described cases where the Internet has been used as a vehicle for racist propaganda, mentioning in particular a 1995 report by the Centre pour l'égalité des chances et la lutte contre le racisme in Belgium. As part of his continuing study of this issue, the Special Rapporteur has received a communication from the International Movement against All Forms of Discrimination and Racism, a non-governmental human rights organization based in Geneva. The Movement reports that, since the Internet came on the scene, many cases of discrimination have been recorded on sites in Japan, basically against members of the Buraku population but also against Koreans living in Japan and against the Ainu, women, persons with disabilities and homosexuals. The Movement also mentions a case of discrimination found in a message put onto the Internet by a certain "Association for the Protection of the Japanese" and aimed particularly against the Buraku. According to the Association, the Buraku are "genetically inferior and children born of a union with a Buraku woman inherit congenital defects". Also, "Buraku people working in teaching are not capable of transmitting Japan's traditional values". The Movement says that the Association has never been taken to court.

20. The Special Rapporteur is seriously concerned about these incidents and recommends that the Japanese Government, and all Governments that may have knowledge of similar incidents in their countries, should take firm action to stamp such practices out. On the international level, he welcomes the initiative taken by the General Assembly in its resolution 51/81 (para. 10), whereby the Assembly recommends that a seminar be organized by the Centre for Human Rights, in cooperation with the Committee on the Elimination of Racial Discrimination, the United Nations Educational, Scientific and Cultural Organization, the International Telecommunication Union and other relevant United Nations bodies, non-governmental organizations and Internet service providers, with a view to assessing the role of the Internet in the light of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

21. The Office of the United Nations High Commissioner for Human Rights plans to hold this seminar on the Internet and racial discrimination from 10 to 14 November 1997 and has invited the Special Rapporteur to it. The Special Rapporteur welcomes the imminent holding of the seminar and hopes that its work will be a step forward in the search for ways and means of resolving the thorny issue of the use of the Internet as a vehicle for racial discrimination, and that it will adopt specific recommendations so that suitable strategies can be adopted and specific action taken to combat the practice.

D. Roma, gypsies or travellers

22. In his latest report to the Commission on Human Rights, the Special Rapporteur mentioned cases of racial discrimination against Roma, particularly by skinheads, in Bulgaria, Romania, the Czech Republic and Slovakia. The

Special Rapporteur has learnt of other recent acts of violence and atrocities against Roma from documentation provided by the European Roma Rights Centre. The journal put out by the Centre, Roma Rights, reports the following cases.[3]

23. In Ukraine, following a resurgence of police brutality against Roma, a Rom was arrested on 4 December 1996 while collecting dead batteries. He was beaten at the police station in Uzhhorod and on his release said that he had been deprived of food for two days. In the same region, on 1 January 1997, police officers invaded the homes of two Roma families on the pretext that they were looking for a thief. Reliable reports indicate that the police officers struck the adult members of the two families and forced two children aged 16 and 10 to stand and recite "Gypsies are bastards, the best place for them is in the graveyard".

24. In Greece, police officers swooped on the Roma camp at Ano Liosia in Attica at 6 a.m. on 27 October 1996, on the pretext of arresting a 21-year-old Rom suspected of stealing cannabis. In the suspect's absence, the police officers took his mother and sister hostage. Verbal exchanges took place as a result of the rage felt by the camp's population and stones were thrown at the police. The police reacted with a second incursion. That same day, the Minister of the Interior said that the police had been doing their job and that people should not believe what gypsies said.

25. In Bulgaria on 2 and 3 February 1997, the newspapers reported the deaths of three Roma children from starvation in the town of Stara Zagora. On 4 February, following an increase in the price of bread, 2,000 Roma demonstrated in the centre of the town of Pazardzhik in protest against "the discriminatory policies of the central Government and the local authorities".

E. Discriminatory application of the death penalty in the United States of America

26. In a recent report on the death penalty in the United States,[4] Amnesty International says that:

> "Racial discrimination in the use of the death penalty continues to be a major concern. For example, 16 of the prisoners executed in 1996 were from ethnic minorities (35.55 per cent), approximately double the percentage in the general population. Also, the vast majority of those executed had been convicted of the murder of a white victim, even though ethnic minorities are murder victims in almost equal numbers as whites."

27. In the same report, Amnesty International mentions cases highlighting the serious consequences of this discriminatory practice by the judiciary, such as miscarriages of justice, which may result in innocent people being put to death. Among these cases are several involving Blacks. In July 1996, four Blacks were cleared of murder 18 years after being convicted. One of them, Dennis Williams, said at a press conference that racism had been to blame for the miscarriage of justice against them. Williams said that the police had picked up the first four Black men they could, without caring whether they were innocent or guilty.

In another case, in Missouri, during the hearing of a case against an unemployed Black man, a judge said that:

> "The Democrat party places far too much emphasis on representing minorities ... people who don't work, and people with a skin that's any colour but white".

The defendant was sentenced to death.

IV. MEASURES TAKEN OR ENVISAGED BY GOVERNMENTS AND LEGISLATIVE AND JUDICIAL BODIES

28. The Special Rapporteur has been informed of measures taken or envisaged by a number of Governments and by the legislative and judicial bodies of some States to combat racism, racial discrimination, xenophobia and related intolerance or to prevent overt manifestations of them. The Rapporteur mentions below the communications received from the German and Brazilian Governments and information on initiatives taken by the United States, French and Australian Governments. The other communications received will be studied and commented on in the report to be submitted to the Commission on Human Rights at its fifty-fourth session.

A. Communication from the German Government

29. In his previous report to the General Assembly (A/51/301), the Special Rapporteur noted observations made by the German Government on a number of paragraphs of his report to the General Assembly at its forty-ninth session (A/49/677). He thanked the German Government for its clarifications regarding the alleged incidents of racial discrimination brought to its attention and congratulated it on the measures taken to punish the offenders and to improve, through appropriate action, the situation regarding xenophobia and racial violence. He also encouraged the German Government to pursue its efforts to curb xenophobia and racial violence.

30. In this context and in response to the Special Rapporteur's request for information on the measures taken or envisaged by Governments to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the German Government sent a communication with information on the measures taken. This included information on racially motivated violence against migrant workers and their families and other vulnerable social groups; on the responsibility of the media (including the Internet) in inciting acts of racially motivated violence; on social measures to eliminate all forms of racism, including the organization of the European Year against Racism and educating people to be tolerant; on the legal situation in the area of racism and racial discrimination (status of criminal law); on the policy for integrating foreigners; and on compensation for victims of acts of violence in the Federal Republic of Germany. The document relating to this communication is available for consultation in the secretariat (Office of the High Commissioner for Human Rights).

31. All the measures taken or envisaged by the German Government were duly noted by the Special Rapporteur, especially those aimed at combating and preventing a new kind of contemporary form of racism, namely, the use of the Internet for purposes of racism and racial discrimination. In that connection, the German Government provided the following information:

"Recently, this has also included the so-called new media, for instance, on-line services which can be accessed through modern information and communication technologies. The legal situation can be described as follows: anything which is harmful or even punishable in an 'off-line' form must not be assessed or treated differently once it is presented 'on-line'. However, the legal and investigative possibilities are restricted, mainly due to the anonymous and frequently international dissemination of information (international networks).

"The Internet is a typical example of a global information network. In late 1996, the Federal Government adopted a Federal Bill Establishing the General Conditions for Information and Communication Services. Following the parliamentary debate, the Bill will come into force on 1 August 1997. The Bill lays down the basic legal terms for the provision and use of the new information and communication services. It lays down the responsibility of the so-called providers, and contains amendments to the Penal Code and to the Act on Administrative Offences and specific youth protection provisions, as the Bill extends the Act Concerning the Distribution of Publications Harmful to Young Persons to the new information and communication services. The Federal Government has thus made clear that it actively counteracts the portrayal of violence in the new media.

"The Bill is based on the principle of freedom of access. It reflects the fact that the responsibility of those concerned needs to be regulated, with the providers' responsibility for their own content being governed by general statutes. The common aim should be to encourage Internet providers - both nationally and internationally - efficiently to filter out illegal information on the Internet on a voluntary basis.

"An unequivocal identification procedure for all Internet users world wide would be required, so as to ensure - both nationally and internationally - that information which is relevant from a criminal law point of view is not disseminated via the data networks. This procedure would be employed at certain nodal points, for instance, where the information is fed in by the providers ... Industry is called upon to develop such safe systems and secure them internationally. However, the terms and systems of criminal law also need to be harmonized.

"When asked about the connection between the portrayal of violence in the media and the actual use of violence, the Federal Government has several times appealed to those responsible to limit the portrayal of violence. However, owing to the freedom of the press, broadcasting and films which is enshrined in article 5 (1), second sentence, of the Basic Law, the State must not interfere with, or exert an influence on, the content of the media. There is also a ban on censorship, so that media

content cannot be checked in detail. Therefore, the Federal Government can only appeal to the responsible media professionals not to publish any harmful or punishable content and, equally importantly, not to contribute to the escalation of violence by dramatizing specific events."

B. United States of America

32. In his most recent report to the Commission on Human Rights (E/CN.4/1997/71), the Special Rapporteur noted that despite the progress made, thanks in part to affirmative action, racism and racial discrimination persisted, structurally, economically, socially and culturally in the United States. By way of illustration, he mentioned the Texaco affair, the fires in black community churches, police brutality in New York, the discriminatory application of the death penalty in the State of Georgia and incitements to racial hatred and anti-Semitism appearing on the Internet. He did, however, express satisfaction at the ratification by the United States of the International Convention on the Elimination of All Forms of Racial Discrimination, while warning that there was still resistance on that score and that much remained to be done.

33. The Special Rapporteur has been informed of President William J. Clinton's initiative on race, "One America in the 21st Century", which he announced in the course of an address delivered at the University of California at San Diego on 12 June 1997. This year-long (September 1997-September 1998) initiative will examine the current state of race relations and the common future of the various communities living in the United States; promote the adoption of laws and policies that can help ensure that the country remains cohesive; and enlist individuals, communities, businesses and government at all levels in an effort to help Americans understand their differences while appreciating the values that unite them.[5]

34. According to the press release issued on 12 June 1997 by the White House information service, the goals of the President's initiative are:

"I. To articulate the President's vision of racial reconciliation and a just, unified America.

II. To help educate the nation about the facts surrounding the issue of race.

III. To promote a constructive dialogue, to confront and work through the difficult and controversial issues surrounding race.

IV. To recruit and encourage leadership at all levels to help bridge racial divides.

V. To find, develop and implement solutions in critical areas such as education, economic opportunity, housing, health care, crime and the administration of justice ..."

35. The elements of this initiative are: the establishment of a diverse, seven-member advisory board which will examine the current state of racial discrimination and recommend appropriate corrective measures to the President; a nationwide campaign by the President to raise public awareness; outreach to community leaders, businessmen, State and local officials, members of Congress, business leaders and individuals, encouraging them to become involved in reconciliation and community-building projects; and a President's report to the nation on the status of the race issue.

36. The President's report, to be issued at the end of September 1998, will:

> "Present his vision of One America, including an illustration and assessment of the growing diversity of our nation, and of his consultations with his advisory board;
>
> Reflect the work that has occurred during the year, including the conversations and suggestions made at town hall meetings and other venues;
>
> Report on how the nation has evolved on the issue of race over the past 30 years, including the studies commissioned for the initiative;
>
> Provide recommendations and solutions that enable individuals, communities, businesses, organizations and government to address difficult issues and build on our best possibilities."

37. The Special Rapporteur welcomes this initiative by the United States Government.

C. France

38. In his previous report to the General Assembly (A/51/301), the Special Rapporteur had noted the intention of the then French legislature to increase the severity of the Pasqua/Debré laws governing foreign residents by adopting measures to improve control over immigration by non-Europeans. The measures envisaged included making the issuance of short-stay visas more systematically subject to proof of health insurance (a formality which would be required in the case of countries where the "migratory risk" was high); improving the identification of visa applicants from those countries; reforming the procedure for the issuance of the "certificat d'hébergement" (inter alia by requiring the person offering accommodation to give notice of the visitor's departure); restricting hospital care for illegal aliens to "emergencies" or to diseases likely to be contagious; and extending to 40 days the period of administrative detention for persons who entered France illegally.

39. The Special Rapporteur had criticized the discriminatory nature of the proposed measures. He has since been informed of the measures recently envisaged by the new French Government.[6] These include regularizing the status of certain categories of undocumented aliens[7] and drafting a preliminary bill on the entry and stay of foreign nationals. The preliminary bill includes provisions designed to make it easier for foreigners to stay in France and for foreign scientists, students and persons "with strong ties to France" (older

workers, foreigners married to French citizens, etc.), in particular, to obtain visas. Another bill, on nationality, currently being drafted by the Ministry of Justice would seek to revert to the jus soli system.

40. All these measures are still at the drafting stage. Even so, they reflect a trend that differs markedly from the approach envisaged by the previous Government. The Special Rapporteur welcomes this positive development and hopes that these measures will be improved upon and given material form in laws and regulations.

D. Communication from the Brazilian Government

41. In his previous report to the General Assembly, the Special Rapporteur referred to the dialogue established between the Government of Brazil and himself after the publication of his report on his mission to Brazil (E/CN.4/1996/72/Add.1). In the context of this continuing dialogue, he has received the following communication from that Government:

> "[1...] The Brazilian Government has been giving continuous priority to the implementation of its commitments relating to the struggle against racial discrimination and inequality of opportunities. In this sense, the first anniversary of the National Programme for Human Rights, commemorated on 13 May 1997, was the occasion for an evaluation of the results and progress achieved concerning the promotion and protection of human rights in general, and the promotion of the Black population in particular.
>
> "2. The integrated work of Government and civil society has given great dynamism to the Interministerial Working Group for the Promotion of the Black Population, created by Presidential decree of 20 November 1995, which was assigned the task of formulating public policies for the promotion of the rights of Afro-Brazilians. Among the achievements registered in this first year of work, the following are to be highlighted:
>
> - Creation of the National Programme to Combat Sickle-Cell Anaemia (a genetic disease affecting mainly individuals of the Negro race);
>
> - Inclusion of the item race/colour in death and birth certificates;
>
> - Inclusion of the item race/colour in the school census and in all statistical surveys in the field of education;
>
> - Submission of studies and proposals for the implementation of article 68 of the Temporary Constitutional Provisions Act concerning the granting of ownership titles to the occupiers of the remaining Quilombo lands, like the titles already issued in favour of the communities of Pacoval and Água Fria (state of Pará);
>
> - Proposal for programmes on TV Escola (the educational television channel) aimed at the revision of Brazilian history from the point of view of the African contribution to Brazilian social formation;

- Re-evaluation of textbooks distributed to students of primary and secondary schools all over the country; the re-evaluation exercise resulted in the exclusion of publications containing prejudices and formal errors, as well as discrimination or stereotypes based on race, colour or gender;

- Participation in the elaboration of the 'National Curriculum Parameters', under the aegis of the Ministry of Education.

"3. It is worth mentioning also the elaboration by the Ministry of Justice, through the National Archives and the National Secretariat for Human Rights, of a draft 'Guide on the sources for the history of the Black in contemporary society'. Knowledge of these sources will facilitate actions by Black entities in defence of their rights and the activities of the State in the establishment of public policies directed at the Black population. Equally important is the effort made by the Ministry of Justice, together with the Centre for Studies on Labour Relations and Inequalities, with the support of the European Union, in the elaboration of a project aimed at the promotion of a wide debate - especially among law operators - about the possibilities and limits of juridical norms in the struggle against racial discrimination and in ensuring equality of opportunities and treatment.

"4. The Federal Government has been supporting the activities of the Working Group for the Elimination of Discrimination in Employment and Occupation, set up in the Ministry of Labour by decree of 20 March 1996. The principal actions of the Working Group during its first year of existence may be summarized as follows:

- Convening of a tripartite meeting on the subject 'Implementation of policies aimed at diversity', with the participation of representatives of various corporations (São Paulo, 24 and 25 October 1996);

- Setting up of a subgroup in charge of extending the pilot experiment of the Ministry of Labour in the fight against discrimination to other organs and sectors of the public administration;

- The Ministry of Justice has been giving support to the Ministry of Labour in the development of the programme for the implementation of ILO Convention No. 111 concerning Discrimination in respect of Employment and Occupation;

- Development of projects for the promotion of citizenship and professional training, financed by the Fund for the Support of the Worker;

- Support for the dissemination of Convention No. 111 through interventions made on the occasion of events on discrimination, promotion of equality and human rights organized by different institutions (trade unions, municipalities, non-governmental organizations, Federal and state Governments).

"5. Concerning the dissemination of the International Convention on the Elimination of All Forms of Racial Discrimination, it is worth mentioning the publication of the tenth periodic report to the Committee on the Elimination of Racial Discrimination. This joint initiative by the Ministries of External Relations and Justice made possible the dissemination of knowledge about the rights guaranteed in that juridical instrument and contributed to raising awareness about the international obligations of Brazil in the matter. The dissemination of the Convention was helped through seminars held in different regions of Brazil, with the participation of diplomats and officials of the Ministry of Justice.

"6. As far as legislation is concerned, it must be noted that the National Congress has approved and the President has sanctioned a law which foresees a penalty of one to three years' imprisonment for those who commit a crime of racism by uttering insults of a racial nature or discriminating on grounds of race, ethnicity, colour, religion or nationality. The principal innovation introduced by this law is to characterize as a crime of racism insults or prejudice in labour or personal relations, thus widening the scope of the previous law on the subject which foresaw sanctions only for cases of racism involving the media and restrictions of access to public places on grounds of race.

"7. It should be mentioned also that Law No. 9.455 of 7 April 1997, defining the crime of torture, contains specific reference to the racial question, which demonstrates how the subject has been definitively incorporated in the national agenda. The reference is: 'Art 1 - The crime of torture is characterized when:

A person constrains another using violence or grave threat, with the infliction of physical or mental pain:

(...) c) for reason of racial or religious discrimination'."

42. The Special Rapporteur takes note of and commends the Brazilian Government for these measures. He is, however, concerned about the potential drawbacks of including a mention of race on school and birth certificates, as well as other documents, however laudable the original intent (affirmative action). The Special Rapporteur also continues to be concerned about the fate of indigenous peoples, with whom he had a number of working meetings during his mission to Brazil. He hopes to continue the dialogue with the Government on this matter and looks forward to receiving, at the earliest juncture, information about measures taken or envisaged in favour of these peoples.

E. Australia

43. As mentioned above (para. 11), the Special Rapporteur wrote to the Australian Government on two occasions to solicit a response to allegations contained in two communications which he had received in 1996. Since no reply was forthcoming, the Special Rapporteur requested and received permission from the Government of Australia to undertake a mission to that country in the near future. The Special Rapporteur expresses his appreciation to the Australian

Government for its cooperation and hopes to learn at first hand about the situation of Aborigines in particular, and the situation of foreigners, in Australia.

44. In the meantime, the Special Rapporteur has received information about an Australian Government initiative outlined in a speech[8] by the Prime Minister, Mr. John Howard, at the Australian Reconciliation Convention in Melbourne on 26 May 1997. The Prime Minister said in his speech:

> "This Convention is a unifying event. It is an occasion for positive commitment to the future and a common avowal of the destiny we all share as Australians. It is an occasion also for frank speaking, and there has been some today quite appropriately, and in the same spirit I intend to speak frankly, although I hope on all occasions respectfully.
>
> "Since the inception of the Council in 1991, the Coalition Parties have committed themselves to the reconciliation process and today, on behalf of the Liberal and National parties, I reaffirm that commitment.
>
> "At the heart of this reconciliation process among Australians lie three fundamental objectives:
>
> "The first is a shared commitment to raise the living standards and broaden the opportunities available to the most disadvantaged group in Australian society - and that is indigenous Australians - and that must be done as part of a broader commitment to providing equality of opportunity to all Australians;
>
> "A second objective is a realistic acknowledgement of the interrelated histories of the various elements of Australian society;
>
> "And a third is mutual acceptance of the importance of working together to respect and appreciate our differences and to ensure that they do not prevent us from sharing the future."

45. The Special Rapporteur welcomes this political commitment by the Australian Government. He encourages the Government to translate this commitment into concrete and effective action by adopting appropriate legislative or other measures.

V. CONCLUSIONS AND RECOMMENDATIONS

46. In his previous report to the General Assembly, the Special Rapporteur noted the alarming increase in manifestations of racism, racial discrimination, xenophobia and related intolerance. At the global level, the situation has improved very little. On the contrary, the use of new communication technologies, particularly the Internet, has led to new forms of racism and racial discrimination.

47. Despite the governmental, legislative or judicial measures taken or envisaged in some countries to combat racism and racial discrimination - measures which the Special Rapporteur welcomes - the situation in this area continues to be cause for concern and requires a more proactive approach at the national and international levels in order to stem the proliferation of these evils. The Special Rapporteur already made a number of specific recommendations on this matter in earlier reports. He takes this opportunity to reiterate them and once more urges that they be properly implemented.

48. As in his most recent report to the Commission on Human Rights (E/CN.4/1997/71), the Special Rapporteur would like to reiterate the recommendation which he made to the General Assembly at its fifty-first session:

(a) To convene, without further delay, a world conference on racism, racial discrimination and xenophobia and to include the question of immigration and xenophobia on the agenda; and

(b) To consider taking action at the international level, by beginning studies, research and consultations immediately, over the use of the Internet as a vehicle for racist and xenophobic propaganda.

Notes

[1] Chris de Stoop, Vite, rentrez le linge! L'Europe et l'expulsion des "sans-papiers", Paris, Actes Sud, 1996, pp. 134-137.

[2] Zones d'attente des ports, des aéroports et des gares ferroviaires: visites des associations habilitées (rapport 1996-1997), Paris, ANAFE, 1997, p. 38.

[3] Roma Rights (The Newsletter of the European Roma Rights Centre), spring 1997.

[4] Amnesty International, United States of America: Death Penalty Developments in 1996, doc. AI Index: AMR 51/01/97, March 1997.

[5] Address given by President Clinton in San Diego on race relations (extracts: diversity is vital, as is offering help to minorities, AXF/04) (3400), the White House, Office of the Press Secretary, San Diego, California.

[6] Libération, 26 August 1997.

[7] Circular of 24 June 1997 concerning reappraisal of the status of certain categories of undocumented aliens, Journal Officiel de la République Française, 26 June 1997, p. 9819.

As the present report was being drafted, the following news item appeared in the newspaper Le Monde on Tuesday, 23 September 1997 (p. 12):

"Demonstration in Paris calls for regularization of the status of undocumented aliens: On Saturday, 20 September in Paris, some 2,000 undocumented aliens and their supporters staged a march from the Place de la République to the Opéra, calling for regularization of the status of all undocumented aliens, repeal of the Pasqua/Debré laws, the release of persons imprisoned for non-possession of a residence permit, an end to deportations and the return of deportees. Numerous organizations and associations supported the demonstration ... According to the Ministry of the Interior, as of 31 August, the status of 1,000 undocumented aliens had been regularized, while 89,432 applications were pending in various prefectures. The deadline for submission of applications is 31 October."

[8] Press release from the Office of the Australian Prime Minister, 27 June 1997.